

shall be paid to the school treasurer of each township. This school treasurer is the very officer who has collected and paid this fund into the treasury of the county under the amendment of 1873.

The argument is that this section only applied to the school fund from other sources, and could not apply to this, because it was not payable into the county treasury when the section was enacted.

But let us suppose that the legislature had by statute increased the fund in the county treasury from other sources, as by giving to it some penalty for violation of a new statute, would it require an express provision to authorize the auditor to apportion that with what the treasurer was receiving before? The question answers itself. The fund — the whole fund in the county treasury devoted to the use of schools — was to be apportioned, and if the fund arising from the sixteenth section becomes a part of it, it must be distributed. And the statute carefully provides, that, in making that distribution, the appropriation of the sixteenth section to the schools of the township shall be strictly observed.

It is unnecessary to protract the argument, for we fully concur with the opinion of the Supreme Court of Indiana construing their own statute.

*Judgment affirmed.*

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MELENDY v. RICE.

Where the judgment of the highest court of a State is here for re-examination, the Federal question, which, it is claimed, arises in the record, will be considered here as it comes from that court. Where, therefore, the point there arising was whether the evidence in the record sustained a finding of fact upon which the judgment of an inferior court had been entered, and the appellate court was permitted by its rules to set aside the judgment as against the weight of evidence only where there was no evidence to support it, or such an absence of evidence that it might be presumed to have been given through the influence of prejudice, passion, or favor, this court will not, upon a question of preponderance of testimony alone, reverse the judgment of the latter court. *So held*, where the question below was, whether a party, when he purchased property, had reasonable cause to believe that his vendor was insolvent, and was making the sale in fraud of the bankrupt law.

ERROR to the Supreme Court of the State of Iowa.

Rice sued Melendy and others in the Marshall County, Iowa, District Court, for wrongfully and forcibly entering his store and carrying away goods. Melendy justified as marshal of the United States for the district of Iowa, claiming that he seized the goods as the property of Clark & Freer, bankrupts, under a provisional warrant of seizure issued from the Bankrupt Court after the adjudication in bankruptcy. Rice claimed that he purchased the property from Clark & Freer before their bankruptcy. Melendy insisted that the sale was in fraud of the bankrupt law; and the case turned upon the single question whether Rice, when he purchased, had reasonable cause to believe that Clark & Freer were insolvent. The trial below was by a referee, and he found in favor of Rice. Minutes of the testimony taken by the referee were filed with his report. In accordance with the practice in Iowa, a judgment was entered in vacation by the clerk, such as was recommended by the referee. At the next term, a motion was filed to set aside the report of the referee and vacate the judgment which had thus been entered, and, among other causes assigned, was one to the effect that the referee erred in finding from the testimony that Rice, when he purchased, did not have reasonable cause to believe that Clark & Freer were insolvent. This motion was overruled, and the judgment affirmed as entered.

From this judgment of the District Court an appeal was taken to the Supreme Court of the State, where the same finding was assigned for error. That court affirmed the judgment below. A rehearing was then had, with the same result. The case is now here upon a writ of error issued under sect. 790, Rev. Stat., and there is the same assignment of error.

*Mr. George G. Wright* for the plaintiff in error.

*Mr. Thomas J. Henderson, contra.*

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Whenever the judgment of the highest court of a State is brought here for the re-examination of some decision of a Federal question, we must consider the question as it comes to us from that court. This record shows that the question below was whether a finding of fact by a referee should be set aside

because not sustained by the evidence. Upon writs of error to the courts of the United States, we cannot be called upon to decide such a question, because the finding of the court below as to facts is conclusive upon us. *Norris v. Jackson*, 9 Wall. 127; *Insurance Company v. Sea*, 21 id. 160. But in Iowa a different practice prevails, and our rule has been so far, and only so far, relaxed as to permit the Appellate Court to set aside a judgment of an inferior court, because against the weight of the evidence, when there is no evidence whatever to support it, or when there is such an absence of evidence that it may be presumed to have been given through the influence of passion, prejudice, or favor. *Rice v. Melendy*, 41 Iowa, 400; *Wilson v. B. & M. R. Railroad Co.*, 33 id. 592; *Starker v. Leese & Mahone*, id. 595; *Pearson v. Minturn*, 18 id. 37; *Bellamy et al. v. Doud*, 11 id. 255. The judgment must be clearly and manifestly wrong.

Applying even this relaxed rule to the present case, we are satisfied that the judgment of the Supreme Court of the State ought not to be reversed. The question is one of preponderance of testimony alone. It certainly cannot be said there is no evidence in the case to support the finding, and, after three judgments of affirmance in the courts below, hardly any thing short of that would justify a reversal here.

*Judgment affirmed.*

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#### AMERICAN BRIDGE COMPANY v. HEIDELBACH.

1. A company, to secure the payment of its bonds, mortgaged its property, and the rents, issues, and profits arising therefrom, with the provision, that, if there was default in paying the interest, the mortgagee might take possession of the property, manage the same, and receive and collect all rents and claims due and to become due to the company. Default was made; and the mortgagee, in November, 1874, filed his bill, setting forth that the company had on hand moneys and claims due to it, both of which he prayed might be applied to his mortgage. An execution upon a judgment, which B. had against the mortgagor, having been sued out and returned *nulla bona*, he, in December of that year, filed his bill to subject such moneys and claims to the payment of his judgment. *Held*, that, inasmuch as the mortgagee had not taken possession, his claim to the earnings and income on hand at the time of filing his bill must be postponed to that of B.
2. *Galveston Railroad v. Cowdrey*, 11 Wall. 459, and *Gilman et al. v. Illinois & Missouri Telegraph Co.*, 91 U. S. 603, cited and approved.